Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

MARTIN M. MADSON, Petitioner

v.

JANIE MADSON, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON STATE

RESPONSE TO PETITION FOR CERTIORARI

Of Counsel:

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QUESTION PRESENTED:

Does the practice of Washington State Courts which allows one side to argue at a motion for reconsideration, but denies the other party an opportunity to argue, violate the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution?

LIST OF PARTIES:

The Petitioner is MARTIN M. MADSON, who is representing himself, pro se.

The Respondent is JANIE MADSON, who is represented by:

MICHAEL E. STERLING
2135 - 112th Ave. NE, Suite 101
Bellevue, Washington 98004

Of counsel in this case is:

H. MICHAEL FIELDS
OF ANDERSON & FIELDS, INC., PS
207 East Edgar Street
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The Respondent, JANIE MADSON, by and through her counsel of record, MICHAEL E. STERLING, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Order of the Supreme Court of Washington and the Decision of the Court of Appeals of Washington State, said final order being entered March 31,

1992 and contained in Petitioner's Petition.

I.

STATEMENT OF THE CASE

There are inaccuracies or misstatements contained in the Petition for Writ of Certiorari.

Legal Basis: Mr. Madson cites 26 USC Section 1257(3) as the basis for this Court acknowledging jurisdiction to accept review. To invoke this Court's jurisdiction under that subsection, Mr. Madson must allege that a particular state statute is invalid as being repugnant to the Constitution. However, his Petition does not challenge the invalidity of any state statute. It merely challenges the appropriateness of

the Trial Court's implementation of a Washington State Civil Rule, CR 59(e).

His characterization of the thrust of the decision of the Court of Appeals, Division I, State of Washington, at page 2 of his petition is too broad and inaccurately characterized the thrust of that decision. The same due process argument was made before the Court of Appeals and the reasons why the Court of Appeals felt that no due process violation had occurred are contained in its decision at pages 9 through 10, a copy of which is contained in Mr. Madson's Petition.

II.

STATEMENT OF FACTS

As the Court of Appeals accurately cited in its decision, during the course of the parties' separation, Mr. Madson

received in excess of $600,000.00 in partnership distributions. He failed to place them in a special account as required by Agreed order entered into their divorce proceeding in May of 1986. Mr. Madson had also violated that Order by failing to satisfactorily account for the expenditure of those funds. By assigning the right to these funds as security for obligations that he incurred during the separation, he not only violated that order but subsequent order entered on November 1, 1988. By the time the case got to trial, notwithstanding his use and failure to appropriately account for the $600,000.00 in funds that he received and expended he was $45,000.00 in arrears in temporary maintenance and child support owed to his wife, Janie Madson. Some of the known expenditures of the funds as cited by the Court of

Appeals in its decision at page three, include $20,000.00 spent on a European vacation and various other misappropriations. The total judgment for past due maintenance and support and accumulated interest was $51,000.00 at the time of the ultimate court decision.

As of the time of separation, the major assets of the parties were a home, secured by a mortgage, the partnership interests valued at the time of trial at $145,000.00 plus the $600,000.00 in partnership distributions which were received and expended by Mr. Madson as outlined above during the separation. There was only about $4,000.00 in unsecured indebtedness. By the time the trial had occurred, Mr. Madson had expended all of the $600,000.00 with nothing to show for it; assigned future partnership distributions as security for over $200,000.00 in debts that he

had incurred from various cronies of his.

Trial lasted several days in June of 1989. The findings of the trial court were not challenged on appeal by Mr. Madson. Shortly before trial Mr. Madson had filed Chapter 7 bankruptcy.

The Trial Court was faced with the following circumstances. To award Janie the house with a net value of $67,000.00, the balance of the partnership that were acquired during the marriage valued at $145,000.00, Mr. Madson having already received the approximately $600,000.00 in community distributions, constituted a property division to Janie of less than a third of the overall community estate to Janie Madson. The Trial Court knew that to award her the judgment for the past due maintenance (nominated in other states as alimony) the inaccuracy was ever

questioned, did still not result in an overall property award of asset even approaching 50%. The Trial Court also knew, notwithstanding whatever award it might make of various assets to her, that only the award of past due maintenance was guaranteed to be safe in light of Mr. Madson's pending bankruptcy.

None of this was disputed. Mr. Madson felt, however, that as an offset against the judgment for past maintenance and child support he would be entitled to certain credits. Contrary to his representation in his Petition, he did not raise the issue of credits for the first time in the post trial proceeding that occurred in August of 1989. In its decision, the Court of Appeals accurately points out

> "The record shows however that the husband, who represented himself pro se, raised the issue of credits during

> opening argument. Husband was informed several times during the course of trial that it was necessary to present evidence in support of his contentions. He failed to present any evidence of the payments he alleges should be used to offset the judgment.
>
> Moreover, there was ample evidence of the arrearage before the trial court; the husband repeatedly conceded during trial that he had failed to meet his support obligations after about June, 1988. Nor did the husband dispute the amount of the arrearage." See: Court of Appeals Decision, pages 8-9.

He raised the issue in opening argument at the June trial. He was warned by the trial court that he must present evidence as to every contention. He failed to present any evidence on the issue after several days of trial and in closing argument simply asked to Court to "wipe the slate clean" based on alleged inability to pay (RP 339). A copy of the text is set forth in the petition.

At the hearing of August 25, 1989, presentation of Findings of Fact and Conclusions of Law and Decree of Dissolution occurred with arguments thereon. At that hearing, the issue of credits against the past due maintenance and child support was again raised by Mr. Madson. As the Court of Appeals accurately points out, the Trial Court entered a decision that "the issue relative to credits is moot" (RP 48). A copy of the text is set forth in the Petition. The Court did leave open an alternative for Mr. Madson to file further legal memoranda on the question of whether in the exercise of the Court's discretion, the judgment for past due maintenance should be waived.

At the January 1990 hearing the Court had already had the benefit of Mr. Madson's motion for reconsideration and supporting material, Janie Madson'

answering material and Mr. Madson's responsive memoranda. Oral argument was not contemplated but the Court did bring the parties in for its final decision in January after reading all of the materials.

Confusion arose at the hearing when the Court was rendering its decision in January on what had occurred in prior proceedings. The only oral comment that the Court allowed to be made was that of Janie Madson's counsel who simply corrected the Court and cleared up the Court's confusion on what occurred at prior proceedings a month earlier.

III.

CONCLUSION:

In short, since it was clear that the evidence that Mr. Madson sought to introduce after the trial that concluded in late June, was not new evidence but

rather evidence that could have been presented at trial, Mr. Madson had not made out the requisite grounds under CR 59(4) or any other subsection of the rule. The reconsideration boiled down to whether the Court, in the exercise of its discretion, should or should not enter the judgment for past due maintenance and support.

Thus, the Court of Appeals quite accurately pointed out that Counsel's only oral comment was recitation that had refreshed the Trial Court's memory regarding the basis of the award since the trial court had before it everything that was necessary to render a decision, the decision of the Court of Appeals should stand for the reasons cited in its decision. No violation of Mr. Madson's due process had occurred.

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted this 23 day of July, 1992.

Michael E. Sterling

MICHAEL E. STERLING
Attorney for Respondent

RULE 59. NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done.

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be served and filed not later than 10 days after the entry of the judgment. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of judgment unless the court directs otherwise.

A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court of its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds thereof.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is served and filed, the judge by whom it is to be heard may on his own motion or on application determine:

(1) *Time of Hearing.* Whether the motion shall be heard before the entry of judgment;

(2) *Consolidation of Hearings.* Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and

(3) *Nature of Hearing.* Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.